

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3637 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAHAJI RAMCHANDJI THAKOR

Versus

DISTRICT MAGISTRATE

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Appearance:

MR. R.C. KODEKAR for MR VIJAY H PATEL for Petitioner  
MR. NIGAM SHUKLA, ADDL. G.P. for the reespondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

Mr. R.C. KODEKAR for Mr. Vijay H. Patel,  
learned Advocate, for the petitioner. Mr. Nigam Shukla,  
learned Addl. Government Pleader for the respondents.  
This Special Civil Application is directed against the  
detention order dated 22.4.1996 passed by the District  
Magistrate, Mehsana, detaining the petitioner under the  
provisions of the Gujarat Prevention of Anti-Social

Activities Act, 1985. The detention order was executed on 22.4.1996 and since then the petitioner is under detention lodged at Porbandar Jail, Probandar.

2. This Special Civil Application was filed on 14.5.1996 and on 15.5.1996 rule returnable for June 24, 1996 was issued. So far neither any reply has been filed nor any affidavit of the detaining authority has been filed.

2. The grounds enclosed with the detention order show that 10 criminal cases under Prohibition Act were registered against the petitioner. Out of which, six cases were pending trial and the remaining four cases were pending the police investigation at the time when the detention order was passed. After noticing the allegations pertaining to these criminal cases, the detaining authority has referred to the statements made by seven witnesses against the petitioner on 13.4.1996 and these witnesses have deposed against the petitioner with regard to his unauthorised business of country liquor and that the petitioner has been pressurising the witnesses to cooperate with him in this unauthorised business of the liquor and in case they did not cooperate with him, the petitioner gave them public beating. He has become problem to the public order. He threatens the witnesses and has been beating them. The petitioner and his associate have been pressurising the witnesses to stock his country liquor at their places. The detaining authority has also considered that on account of the petitioner's terror the witnesses had requested to keep their identity secret and accordingly the detaining authority has noted that under the provisions of Section 9(2) of the P.A.S.A. Act, the identity of the witnesses is kept secret. The detaining authority has found that the petitioner is engaged in the business of anti-social activities, was a headstrong person and was a bootlegger and the other proceedings under the Bombay Police Act were not sufficient to prevent the petitioner from continuing his anti-social activities as aforesaid. Accordingly, the detention order was passed.

3. The allegations and the materials such as has been used against the petitioner for the purpose of passing the detention order were to the breach of public order or not is the only question on which the arguments have been addressed by the learned counsel for the petitioner. The detention order has been challenged on various grounds. The legal position as to whether such allegations constitute a case of breach of public order was considered by this court in detail in the decision which was rendered on 4.10.1996 in Special Civil Application No. 3879 of 1996 and after considering

several decisions of the Supreme Court and this court, a considered view has been taken that such allegations do not constitute a case of breach of public order. Such allegations and materials even if taken as correct, on its face value make out a case of breach of law and order and not public order and therefore the detention cannot be sustained as it has been passed on collateral ground or a ground which is not at all germane to the requirement of the public order. In absence of the case of breach of public order, the detention order cannot be sustained merely because the petitioner has violated law and order.

4. Accordingly, this Special Civil Application is allowed. The detention order dated 22.4.1996 passed by the District Magistrate, Mehsana, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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